

REMARKS

The present application is a Section 371 application of PCT/EP200405490 and pursuant to PCT Rule 17, the applicant is not required to file a copy of the Italian priority document. For this reason, it is requested that the Examiner acknowledge that the present application is a National Stage application of a PCT application.

The Examiner is thanked for withdrawing the claim objections and the rejection under 35 U.S.C. § 112, second paragraph.

Claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hopkins.

Reconsideration is requested.

New claims 20-23 are being submitted to point out certain preferred embodiments of the invention. Claim 20 is based on Compound A7 of original claim 7. Claims 21-23 are based on Example 4 of the present application and compound 240 and 241 of page 47 of the present specification.

Hopkins discloses certain copper salts of succinic acid but does not disclose or suggest the copper salt of 2-methoxy succinic acid or any other copper salt of a 2-alkoxy substituted succinic acid. The Examiner has urged that Hopkins has disclosed that the preferred embodiment of

the 2-substituted succinic acid copper salt has 8-35 carbons, and that Hopkins teaches the lower alkyl groups with up to 7 carbon atoms (column 2, lines 27-34). In addition, the Examiner contended that the disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or non preferred embodiments.

However, the 8-35 carbon atom-hydrocarbon group bonded at position 2 of the succinic acid moiety is not merely a preferred embodiment but it is the only embodiment of a 2-substituted copper salt of succinic acid. The mention of lower alkyl being up to 7 carbon atoms at col. 1, lines 30-32 is only relevant to the definition of R_1 (col. 3, line 16; col. 15, line 42) and R (col. 3, lines 46-48; col. 4, lines 18-21) and is not relevant to the definition of R_4 which is the substituent on the 2 substituted succinic acid compounds at col. 6 of Hopkins.

The preferred embodiment of R_4 in Hopkins is actually any alkyl or alkenyl group having 12 to 28 carbon atoms as disclosed at col. 6, lines 10-12. There is no suggestion that R_4 could be an alkoxy group as pointed out in claims 7-8 and new claims 20-23.

The structural formulas at col. 6 of Hopkins represent one of the possible (I)-(V) succinic anhydride

derivative groups. The radical attached at position 2 of this radical is a hydrocarbon-based group bearing 8-35 carbon atoms and which can be selected among (column 1, lines 60-68; column 2, lines 1-14): (1) hydrocarbon groups; (2) substituted hydrocarbon groups; and (3) hetero groups.

Hopkins does not teach that the group attached at position 2 of the succinic acid moiety can be lower than 8 carbon atoms.

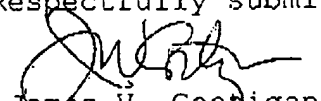
A rejection based on structural obviousness is not proper when the structure in the reference has a required substituent that is different from that of the claimed compound and also has a substantially different molecular weight. The presence of an aliphatic group does not make obvious the substitution of the aliphatic group by an alkoxy group in the absence of any teaching to make the substitution. In the present case the preferred aliphatic group is a long chain 12-28 carbon alkenyl group which does not suggest a six carbon alkoxy group. Hopkins disclosed that his compounds were useful as lubricant additives which does not suggest making any changes in the Hopkins compounds for the purpose of making a novel fungicide. Alkoxy groups are not homologs or isomers of aliphatic groups and there is no suggestion in Hopkins to use an alkoxy group in making a lubricant additive.

The intended use of the compounds of the present application (agricultural fungicide) is completely different from the use of the compounds disclosed by Hopkins (col. 1, lines 29-36: antioxidants and friction modifiers in lubricants).

Attached to this Amendment is a Declaration that is being submitted under 37 CFR§1.132 to provide comparative data obtained by testing the copper (II) salt of 2-methoxy succinic acid and the copper (II) salt of 2-stearyl succinic acid. The test data shows that when a quantity of each compound is used which has the same equivalent weight of copper, the novel 2-methoxy succinic acid copper (II) salt has much higher activity as a fungicide. Nothing in Hopkins suggests or makes obvious these results. For these reasons, it is requested that this ground of rejection be withdrawn.

An early and favorable action is earnestly solicited.

Respectfully submitted,


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